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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,928	11/14/2003	Hikonori Okamoto	OKAMOTO10	7434

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EXAMINER

EDELL, JOSEPH F

ART UNIT PAPER NUMBER

3636

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/706,928	Applicant(s) OKAMOTO, HIKONORI	
	Examiner Joseph F Edell	Art Unit 3636	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/05/04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1, 4, and 8 are objected to because of the following informalities:
    - a. claim 1, line 4, "glasses, and the like" should read --and glasses--;
    - b. claim 1, line 7, "plate means" should read --plate--;
    - c. claim 1, line 10, "framework" should read --frame--;
    - d. claim 1, line 9, "said securing pieces" should read --said plurality of securing pieces--;
    - e. claim 4, line 4, "said securing pieces" should read --said plurality of securing pieces--;
    - f. claim 8, lines 2-3, "said securing pieces" should read --said plurality of securing pieces--.
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Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claims 1-8 use a "means" clause to recite a claim element as a means for performing a specified function. However, it is unclear whether the applicant is invoking 35 U.S.C. 112, 6<sup>th</sup> paragraph in using the word "means" in claims 1-8. Because "means" has a distinct meaning within the U.S. Patent system and patent law in accordance with 35 U.S.C. 112, 6<sup>th</sup> paragraph ("means plus function"), the applicant should delete or substitute another phrase for "a wire frame means" from claims 1, 5, and 6, as this reference seems unintended in this case. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Regarding claim 1, the phrase "said protection plate being of a rigid yet bendable property" is unclear rendering the scope of the claim indefinite.

Regarding claim 7, the phrase "excepting said upper wall" is unclear rendering the scope of the claim indefinite.

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### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over JP Publication No. 09-309370 to Hidechika in view of U.S. Patent No. 5,749,554 to Avila et al.

Hidechika discloses a structure for securing a cup support element that is basically the same as that recited in claims 1-5, as best understood, except that the structure lacks a protection plate, as recited in the claims. See Figures 1-5 of Hidechika for the teaching that the structure has a wire frame 9 (Fig. 1) with at least two wire members and disposed in a seat cushion 3 (Fig. 1) of foam padding, and a plurality of securing pieces 1b,5 (Fig. 1) connected to the wire frame to secure a cup support element. Avila et al. show a structure similar to that of Hidechika wherein the structure has a protection plate 34 (Fig. 6) fixedly attached to the a body portion 50 (Fig. 6) of a cup support element with a plurality of securing pieces 40,41,42 (Fig. 6), a reinforcing bead 38 (Fig. 6), a main portion 35 (Fig. 6), and a pair of lateral walls 36,37 (Fig. 6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the structure of Hidechika such that the structure has a protection plate with a reinforcing bead, a main portion, and a pair of lateral wall wherein the protection plate is fixedly attached to the body portion of the cup support element and the plurality of securing pieces project horizontally on the lateral walls of the protection plate, such as the structure disclosed in Avila et al. One would have been motivated to make such a modification in view of the suggestion in Avila et al. that the protection plate configuration provides a cup holder element that can be easily installed in extending vehicle structures.

5. Claims 6-8, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hidechika in view of Avila et al. as applied to claims 1-5 above, and further in view of JP Patent No. 2000-190783 to Yasuhiko.

Hidechika, as modified, discloses a structure for securing a cup support element that is basically the same as that recited in claims 6-8, as best understood, except that the wire frame assembly in the seat cushion is not specified, as recited in the claims. Yasuhiko shows a structure similar to that of Hidechika wherein the structure has a wire frame assembly in the foam padding of a seat cushion at the bottom wall (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the structure of Hidechika such that the structure has a wire frame assembly with at least two wire members and disposed in the foam padding at a bottom wall, such as the structure disclosed in Yasuhiko. One would have been motivated to make such a modification in view of the suggestion in Yasuhiko that the structure in the bottom wall of the seat cushion provides a retractable cup holder connected to the wire framework.

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### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to structures for securing a cup support element:

U.S. Pat. No. 3,623,683 to Bennett

U.S. Pat. No. 5,520,436 to Rader et al.


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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JE

September 20, 2004

  
Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600